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12 *Holders of Trade Claims*

13 **UNITED STATES BANKRUPTCY COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

16 In re:  
17 PG&E CORPORATION  
18 -and-  
19 PACIFIC GAS AND ELECTRIC  
COMPANY,  
20 Debtors.  
☐ Affects PG&E Corporation  
21 ☐ Affects Pacific Gas and Electric  
Company  
22 ☒ Affects both Debtors  
23 \* *All papers shall be filed in the Lead*  
24 *Case, No. 19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

District Case No. 20-cv-04570-HSG

**TRADE COMMITTEE'S STATEMENT OF  
ISSUES, DESIGNATION OF ITEMS TO  
BE INCLUDED IN THE RECORD, AND  
CERTIFICATION REGARDING  
TRANSCRIPTS**

25 AD HOC COMMITTEE OF  
26 HOLDERS OF TRADE CLAIMS,  
Appellant,  
27 v.  
28 PG&E CORPORATION, et al.,  
Appellees.

1 NOTICE IS HEREBY GIVEN that the Ad Hoc Committee of Holders of Trade Claims  
2 (the “Trade Committee” or “Appellant”) hereby provides, pursuant to Rule 8009 of the Federal  
3 Rules of Bankruptcy Procedure, the following statement of issues, designation of items to be  
4 included in the record, and certificate regarding transcripts in connection with Appellant’s *Notice*  
5 *of Appeal and Statement of Election to Have Appeal Heard by District Court* [D.I. 8261] (the  
6 “Notice of Appeal”). As set forth in the Notice of Appeal, Appellant appeals from (i) the *Order*  
7 *Confirming Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization*  
8 *Dated June 19, 2020* [D.I. 8053] entered on June 20, 2020 (the “Confirmation Order”) and (ii) the  
9 related *Memorandum Decision – Confirmation of Debtors’ and Shareholder Proponents’ Joint*  
10 *Chapter 11 Plan of Reorganization* [D.I. 8001] entered on June 17, 2020 (the “Confirmation  
11 Memorandum” and, together with the Confirmation Order, the “Confirmation Order and  
12 Memorandum”) by the United States Bankruptcy Court for the Northern District of California (the  
13 “Bankruptcy Court”). The Confirmation Memorandum incorporates by reference the Bankruptcy  
14 Court’s prior decisions in (x) the *Interlocutory Order Regarding Postpetition Interest* [D.I. 5669]  
15 entered on February 6, 2020 (the “PPI Order”) and (y) the related *Memorandum Decision*  
16 *Regarding Postpetition Interest* [D.I. 5226] entered on December 30, 2019 (the “PPI  
17 Memorandum” and, together with the PPI Order, the “PPI Order and Memorandum”). Appellant  
18 specifically appeals from the Bankruptcy Court’s ruling in the PPI Order and Memorandum as  
19 incorporated into the Confirmation Order and Memorandum.

#### 20 **STATEMENT OF ISSUES ON APPEAL**

21 Bankruptcy Code section 1129 sets forth the requirements for confirmation of a chapter 11  
22 plan. Section 1129(a)(8) requires that, “[w]ith respect to each class of claims or interests—  
23 (A) such class has accepted the plan; or (B) such class is not impaired under the plan.” Under the  
24 Bankruptcy Code, a class of claims is impaired unless the plan, with respect to each claim in such  
25 class, “leaves unaltered [its] legal, equitable, and contractual rights.” 11 U.S.C. § 1124(1). A “class  
26 that is not impaired,” on the other hand, is “conclusively presumed to have accepted the plan” and  
27 has no right to vote on it. *Id.* § 1126(f).

28 Where an impaired class of claims votes to reject a chapter 11 plan, if all conditions of

1 section 1129(a) are satisfied other than section 1129(a)(8), the plan can be confirmed only if it  
2 “does not discriminate unfairly, and is fair and equitable” with respect to each impaired class that  
3 has not accepted the plan. *Id.* § 1129(b)(1). Moreover, for “each impaired class of claims,” section  
4 1129(a)(7) requires that each holder of a claim or interest who has not accepted the plan must  
5 “receive . . . under the plan . . . value . . . that is not less than the amount such holder would receive  
6 . . . if the debtor were liquidated under chapter 7[.]” Section 726(a) of the Bankruptcy Code  
7 provides the order by which estate property shall be distributed to creditors in a chapter 7  
8 liquidation, and provides, as the “fifth” priority, for payment of post-petition interest “at the legal  
9 rate.” In *Onink v. Cardelucci (In re Cardelucci)*, 285 F.3d 1231 (9th Cir. 2002), the Ninth Circuit  
10 held that the “legal rate” under section 726(a)(5) was the federal judgment rate provided for in 28  
11 U.S.C. § 1961. *See Cardelucci*, 285 F.3d at 1233.

12 Appellant’s members hold General Unsecured Claims<sup>1</sup> against the Debtors that are based  
13 on contracts that incorporate California state law, which in turn provides that, in the event of  
14 breach, interest shall accrue at the rate of 10 percent per annum, unless a different rate is specified  
15 in writing. Cal. Civ. Code § 3289. The Debtors’ Plan provides for payment of post-petition interest  
16 on General Unsecured Claims at the Federal Judgment Rate (calculated as of the Petition Date as  
17 2.59%). The Plan nevertheless asserts that General Unsecured Claims are unimpaired, and thus  
18 have no right to vote for or against the Plan or to challenge the Plan as “discriminating unfair[ly]”  
19 or as not “fair and equitable” under Bankruptcy Code section 1129(b).

20 In the PPI Memorandum and Order, the Bankruptcy Court held that General Unsecured  
21 Claims were impaired not by the Plan, but instead by section 726(a)(5) of the Bankruptcy Code  
22 and its requirement that post-petition interest be paid at the “legal rate,” such that any class of  
23 General Unsecured Claims is unimpaired. The issue on appeal is whether, in a bankruptcy case in  
24 which the debtor is solvent, Bankruptcy Code section 726(a)(5), which can apply in a chapter 11  
25 bankruptcy case only to “each impaired class of claims,” 11 U.S.C. § 1129(a)(7), may apply to  
26 reduce the rate of interest owed to a class of claims that is asserted by the Plan to be unimpaired.

27  
28 <sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Debtors’ and  
Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated June 19, 2020* [D.I. 8048] (the “Plan”).

**DESIGNATION OF RECORD ON APPEAL**

Appellant hereby designates the following items to be included in the record on appeal, which includes all exhibits and addenda attached thereto and filed therewith and all documents incorporated by reference therein:

Item	Filing Date	Docket No. <sup>2</sup>
Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief	Feb. 1, 2019	263
Schedule E/F: Creditors Who Have Unsecured Claims For Non-Individual Debtor PG&E Corporation	Mar. 14, 2019	900
Schedule E/F: Creditors Who Have Unsecured Claims For Non-Individual Debtor Pacific Gas and Electric Company	Mar. 14, 2019	906
Debtors' Joint Chapter 11 Plan of Reorganization	Sept. 9, 2019	3841
Debtors' First Amended Joint Chapter 11 Plan of Reorganization	Sept. 23, 2019	3966
Verified Statement of Ad Hoc Committee of Holders of Trade Claims Pursuant to Bankruptcy Rule 2019	Oct. 16, 2019	4214
Order Establishing Pre-Confirmation Briefing and Hearing Schedule for Certain Legal Issues	Oct. 31, 2019	4540
Debtors' Joint Chapter 11 Plan of Reorganization Dated November 4, 2019	Nov. 4, 2019	4563
Debtors' Brief Regarding Applicable Rate of Postpetition Interest on Allowed Unsecured Claims and Joinder of PG&E Shareholders (the " <u>Debtors' Opening Brief</u> ")	Nov. 8, 2019	4624
Consolidated Edison Development Inc.'s Reservation of Rights Regarding Postpetition Interest on Unsecured Claims	Nov. 8, 2019	4625

<sup>2</sup> Unless otherwise indicated, all references herein to "Docket No." shall be to the docket maintained in the above-captioned chapter 11 cases.

1	Consolidated Opening Brief of the Official		
2	Committee of Unsecured Creditors and Other		
3	Creditor Groups and Representatives Regarding	Nov. 8, 2019	4634
4	the Appropriate Postpetition Interest Rate Payable		
5	on Unsecured Claim in a Solvent Debtor Case (the		
6	<u>“Creditor Groups’ Opening Brief”</u> )		
7	Joinder in Consolidated Opening Brief of the		
8	Official Committee of Unsecured Creditors and	Nov. 8, 2019	4636
9	Other Creditor Groups and Representatives		
10	Regarding the Appropriate Postpetition Interest		
11	Rate Payable on Unsecured Claims in a Solvent		
12	Debtor Case		
13	Reservation of Rights of the Ad Hoc Group of		
14	Subrogation Claim Holders Regarding the	Nov. 22, 2019	4840
15	Appropriate Postpetition Interest Rate Payable on		
16	Unsecured Claims in a Solvent Debtor Case		
17	Debtors’ Brief in Opposition to Consolidated		
18	Opening Brief of Unsecured Creditors and Other		
19	Creditor Groups and Representatives Regarding	Nov. 22, 2019	4849
20	the Appropriate Postpetition Interest Rate Payable		
21	on Unsecured Claims in a Solvent Debtor Case;		
22	Joinder of PG&E Shareholders (the <u>“Debtors’</u>		
23	<u>Responsive Brief”</u> and, together with the Debtors’		
24	Opening Brief, the <u>“Debtors’ Briefs”</u> )		
25	Consolidated Reply Brief of the Official		
26	Committee of Unsecured Creditors and Other		
27	Creditor Groups and Representatives Regarding	Nov. 22, 2019	4855
28	the Appropriate Postpetition Interest Rate Payable		
	on Unsecured Claims in a Solvent Debtor Case		
	(the <u>“Creditor Groups’ Responsive Brief”</u> and,		
	together with the Creditor Groups’ Opening Brief,		
	the <u>“Creditor Groups’ Briefs”</u> )		
	Letter Dated Dec. 5, 2019 in Support of Creditor		
	Groups’ Briefs	Dec. 5, 2019	5003
	Letter Dated Dec. 6, 2019 in Support of Debtors’		
	Briefs	Dec. 6, 2019	5018
	Memorandum Decision Regarding Postpetition		
	Interest	Dec. 30, 2019	5226

1	First Amended Verified Statement of Ad Hoc		
2	Committee of Holders of Trade Claims Pursuant to	Dec. 10, 2019	5060
3	Bankruptcy Rule 2019		
4	Debtors' and Shareholder Proponents' Joint		
5	Chapter 11 Plan of Reorganization Dated	Dec. 12, 2019	5101
6	December 12, 2019		
7	DOCKET TEXT ORDER (no separate order		
8	issued:) For the Make-Whole Optional		
9	Redemption issue arguments on January 14, 2020,		
10	at 10:00 AM, Debtors and the joining		
11	Shareholders will have a total of one hour,		
12	including time for rebuttal, to be shared as their		
13	counsel agree. The opposing creditor groups will		
14	also have one hour, to be shared as their counsel		
15	agree. At the conclusion of the hearing the court	Jan. 9, 2020	N/A
16	would like counsel to be prepared to address the		
17	questions raised in the Memorandum Decision		
18	regarding Postpetition Interest (Dkt. No. 5226),		
19	namely whether orders disposing of that issue and		
20	the Make-Whole issue should be certified for		
21	direct appeal to the court of appeal, certified as		
22	final under FRCP 54(b), or both, or neither. (RE:		
23	related document(s)[4896] Support		
24	Brief/Memorandum filed by Debtor PG&E		
25	Corporation). (Montali, Dennis)		
26	Trade Committee's Statement in Connection with		
27	January 29, 2020 Status Conference	Jan. 27, 2020	5517
28	Debtors' Motion Pursuant to 11 U.S.C. §§ 363(b)		
	and 105(a) and Fed. R. Bankr. P. 6004 and 9019		
	for Entry of an Order (I) Approving and		
	Authorizing the Debtors to Enter into	Jan. 27, 2020	5519
	Restructuring Support Agreement with Consenting		
	Noteholders and Shareholder Proponents and		
	(II) Granted Related Relief		
	Debtors' and Shareholder Proponents' Joint		
	Chapter 11 Plan of Reorganization Dated January	Jan. 31, 2020	5590
	31, 2020		

Limited Objection of the Ad Hoc Committee of Holders of Trade Claims to Debtors' Motion Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019 for Entry of an Order (I) Approving and Authorizing the Debtors to Enter into Restructuring Support Agreement with Consenting Noteholders and Shareholder Proponents and (II) Granted Related Relief	Feb. 3, 2020	5596
Interlocutory Order Regarding Postpetition Interest	Feb. 6, 2020	5669
Objection of the Ad Hoc Committee of Holders of Trade Claims to the Proposed Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization	March 6, 2020	6152
Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 9, 2020	March 9, 2020	6217
Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16, 2020	March 16, 2020	6320
Reservation of Rights and Limited Objection to Confirmation of Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization, Dated March 16, 2020	May 15, 2020	7221
Objection of the Ad Hoc Committee of Holders of Trade Claims to Confirmation of Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16, 2020	May 15, 2020	7288
Teichert Pipelines' Objection to Proposed Cure Amount	May 15, 2020	7289
Limited Objection of the Official Committee of Unsecured Creditors to Plan Confirmation	May 15, 2020	7300
Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated May 22, 2020	May 22, 2020	7521

1	Plan Proponents' Joint Memorandum of Law and		
2	Omnibus Response in Support of Debtors' and	May 22, 2020	7528
3	Shareholder Proponents' Joint Chapter 11 Plan of		
4	Reorganization		
5	Notice of Filing of Debtors' and Shareholder	June 5, 2020	7793
6	Proponents' Updated Objection Summary Chart		
7	Memorandum Decision – Confirmation of	June 17, 2020	8001
8	Debtors' and Shareholder Proponents' Joint		
9	Chapter 11 Plan of Reorganization		
10	Debtors' and Shareholder Proponents' Joint	June 19, 2020	8048
11	Chapter 11 Plan of Reorganization Dated June 19,		
12	2020		
13	Order Confirming Debtors' and Shareholder	June 20, 2020	8053
14	Proponents' Joint Chapter 11 Plan of		
15	Reorganization Dated June 19, 2020		
16	<i>Onink v. Cardelucci (In re Cardelucci)</i> , Appellee's	N/A	N/A
17	Opening Brief, 2001 WL 34091272		
18	<b>Hearing Transcripts</b>	<b>Filing Date</b>	<b>Docket No.</b>
19	Transcript of Aug. 13, 2019 Hearing	Aug. 14, 2019	3540
20	Transcript of Sept. 24, 2019 Hearing	Sept. 25, 2019	4003
21	Transcript of Oct. 7, 2019 Hearing	Oct. 8, 2019	4162
22	Transcript of Oct. 23, 2019 Hearing	Oct. 24, 2019	4467
23	Transcript of Dec. 11, 2019 Hearing	Dec. 12, 2019	5085
24	Transcript of Hearing at Jan. 29, 2020 at 10:00	Jan. 30, 2020	5562
25	a.m. (PST)		
26	Transcript of Hearing at Jan. 29, 2020 at 1:30 p.m.	Jan. 30, 2020	5563
27	(PST)		
28	Transcript of Feb. 4, 2020 Hearing	Feb. 5, 2020	5634
	Transcript of May 27, 2020 Hearing	May 28, 2020	7637
	Transcript of May 28, 2020 Hearing	May 29, 2020	7665
	Transcript of May 29, 2020 Hearing	June 1, 2020	7701



1	Transcript of June 1, 2020 Hearing	June 2, 2020	7710
2	Transcript of June 3, 2020 Hearing	June 4, 2020	7784
3	Transcript of June 4, 2020 Hearing	June 5, 2020	7809
4	Transcript of June 5, 2020 Hearing	June 9, 2020	7843
5	Transcript of June 8, 2020 Hearing	June 10, 2020	7869
6	Transcript of June 11, 2020 Hearing	June 12, 2020	7932
7	Transcript of June 16, 2020 Hearing	June 17, 2020	7984
8	Transcript of June 19, 2020 Hearing	June 22, 2020	8066

10  
11 Appellant reserves the right to designate additional items for inclusion in the record and/or  
12 restate issues presented on appeal.

13 **CERTIFICATE REGARDING TRANSCRIPTS**

14 Appellant certifies pursuant to Bankruptcy Rule 8009(b)(1) that it is not ordering any  
15 transcripts. All transcripts have been prepared, are filed on the docket, and have been designated  
16 in the record.

17  
18 *[Signature to follow.]*  
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1 Dated: July 17, 2020

**GIBSON, DUNN & CRUTCHER LLP**

2  
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